

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 907 KAR 9:020. Reimbursement provisions and requirements regarding outpatient  
6 behavioral health services provided by Level I or Level II psychiatric residential treat-  
7 ment facilities.

8 RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23)

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
11 Services, Department for Medicaid Services, has a responsibility to administer the Med-  
12 icaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to  
13 comply with any requirement that may be imposed or opportunity presented by federal  
14 law to qualify for federal Medicaid funds. This administrative regulation establishes the  
15 reimbursement provisions and requirements regarding Medicaid Program outpatient  
16 behavioral health services provided by Level I or Level II psychiatric residential treat-  
17 ment facilities to Medicaid recipients who are not enrolled with a managed care organi-  
18 zation.

19 Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined  
20 by KRS 314.011(7).

21 (2) "Behavioral health practitioner under supervision" means an individual who is:

1 (a)1. A licensed professional counselor associate;

2 2. A certified social worker;

3 3. A marriage and family therapy associate;

4 4. A licensed professional art therapist associate;

5 5. A licensed assistant behavior analyst;

6 6. A physician assistant;

7 7. A certified alcohol and drug counselor; or

8 8. A licensed clinical alcohol and drug counselor associate in accordance with Sec-  
9 tion 5 of this administrative regulation; and

10 (b) Employed by or under contract with the same billing provider as the billing super-  
11 visor.

12 (3) "Billing provider" means the individual who, group of individual providers that, or  
13 organization that:

14 (a) Is authorized to bill the department or a managed care organization for a service;  
15 and

16 (b) Is eligible to be reimbursed by the department or a managed care organization for  
17 a service.

18 (4) "Billing supervisor" means an individual who is:

19 (a)1. A physician;

20 2. A psychiatrist;

21 3. An advanced practice registered nurse;

22 4. A licensed psychologist;

23 5. A licensed clinical social worker;

- 1       6. A licensed professional clinical counselor;
- 2       7. A licensed psychological practitioner;
- 3       8. A certified psychologist with autonomous functioning;
- 4       9. A licensed marriage and family therapist;
- 5       10. A licensed professional art therapist; or
- 6       11. A licensed behavior analyst; and

7       (b) Employed by or under contract with the same billing provider as the behavioral  
8 health practitioner under supervision who renders services under the supervision of the  
9 billing supervisor.

10       (5) "Certified alcohol and drug counselor" means an individual who meets the re-  
11 quirements established in KRS 309.083.

12       (6) "Certified psychologist" means an individual who is recognized as a certified psy-  
13 chologist in accordance with Title 201, Chapter 26 of the Kentucky Administrative Regu-  
14 lations.

15       (7) "Certified psychologist with autonomous functioning" means an individual who is a  
16 certified psychologist with autonomous functioning pursuant to KRS 319.056.

17       (8) "Certified social worker" means an individual who meets the requirements estab-  
18 lished in KRS 335.080.

19       (9) "Department" means the Department for Medicaid Services or its designee.

20       (10) "Federal financial participation" is defined by 42 C.F.R. 400.203.

21       (11) "Healthcare common procedure coding system" or "HCPCS" means a collection  
22 of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that  
23 represents procedures or items.

1 (12) "Level I PRTF" means a psychiatric residential treatment facility that meets the  
2 criteria established in KRS 216B.450(5)(a).

3 (13) "Level II PRTF" means a psychiatric residential treatment facility that meets the  
4 criteria established in KRS 216B.450(5)(b).

5 (14) "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

6 (15) "Licensed behavior analyst" is defined by KRS 319C.010(6).

7 (16) "Licensed clinical alcohol and drug counselor" is defined by KRS 309.080(4).

8 (17) "Licensed clinical alcohol and drug counselor associate" is defined by KRS  
9 309.080(5).

10 (18) "Licensed clinical social worker" means an individual who meets the licensed  
11 clinical social worker requirements established in KRS 335.100.

12 (19) "Licensed marriage and family therapist" is defined by KRS 335.300(2).

13 (20) "Licensed professional art therapist" is defined by KRS 309.130(2).

14 (21) "Licensed professional art therapist associate" is defined by KRS 309.130(3).

15 (22) "Licensed professional clinical counselor" is defined by KRS 335.500(3).

16 (23) "Licensed professional counselor associate" is defined by KRS 335.500(4).

17 (24) "Licensed psychological associate" means an individual who:

18 (a). Currently possesses a licensed psychological associate license in accordance  
19 with KRS 319.010(6); and

20 (b) Meets the licensed psychological associate requirements established in 201 KAR  
21 Chapter 26.

22 (25) "Licensed psychological practitioner" means an individual who meets the re-  
23 quirements established in KRS 319.053.

(26) "Licensed psychologist" means an individual who:

(a) Currently possesses a licensed psychologist license in accordance with KRS 319.010(6); and

(b) Meets the licensed psychologist requirements established in 201 KAR Chapter 26.

(27) "Managed care organization" means an entity for which the Department for Medicaid Services has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.

(28) "Marriage and family therapy associate" is defined by KRS 335.300(3).

(29) "Peer support specialist" means an individual who meets the peer specialist qualifications established in:

(a) 908 KAR 2:220;

(b) 908 KAR 2:230; or

(c) 908 KAR 2:240.

(30) "Physician" is defined by KRS 205.510(11).

(31) "Physician assistant" is defined by KRS 311.840(3).

(32) "Provider" is defined by KRS 205.8451(7).

**Section 2. General Requirements.** For the department to reimburse for a service covered under this administrative regulation, the service shall:

(1) Meet the requirements established in 907 KAR 9:015; and

(2) Be covered in accordance with 907 KAR 9:015.

**Section 3. Reimbursement.** (1)(a) A unit of service for a service listed on the Level I and Level II PRTF Non-Medicare Services Fee Schedule shall be as established on the

1 Level I and Level II PRTF Non-Medicare Services Fee Schedule.

2 (b) A unit of service for a service not listed on the Level I and Level II PRTF Non-  
3 Medicare Services Fee Schedule shall be:

4 1. Fifteen (15) minutes in length unless a different amount is established for the ser-  
5 vice in the corresponding:

6 a. Current procedural terminology code; or

7 b. Healthcare common procedure coding system code; or

8 2. The unit amount established in the corresponding:

9 a. Current procedural terminology code; or

10 b. Healthcare common procedure coding system code.

11 (2) The rate per unit for a screening or for crisis intervention shall be:

12 (a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician  
13 Fee Schedule for the service if provided by a:

14 1. Physician; or

15 2. Psychiatrist;

16 (b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee  
17 Schedule for the service if provided by:

18 1. An advanced practice registered nurse; or

19 2. A licensed psychologist;

20 (c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee  
21 Schedule for the service if provided by a:

22 1. Licensed professional clinical counselor;

23 2. Licensed clinical social worker;

1 3. Licensed psychological practitioner;

2 4. Certified psychologist with autonomous functioning;

3 5. Licensed marriage and family therapist;

4 6. Licensed professional art therapist; or

5 7. Licensed clinical alcohol and drug counselor in accordance with Section 5 of this  
6 administrative regulation; or

7 (d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medi-  
8 care Physician Fee Schedule for the service if provided by a:

9 1. Marriage and family therapy associate working under the supervision of a billing  
10 supervisor;

11 2. Licensed professional counselor associate working under the supervision of a bill-  
12 ing supervisor;

13 3. Licensed psychological associate working under the supervision of a board-  
14 approved licensed psychologist;

15 4. Certified psychologist working under the supervision of a board-approved licensed  
16 psychologist;

17 5. Certified social worker working under the supervision of a billing supervisor;

18 6. Physician assistant working under the supervision of a billing supervisor;

19 7. Licensed professional art therapist associate working under the supervision of a  
20 billing supervisor;

21 8. Certified alcohol and drug counselor working under the supervision of a billing su-  
22 pervisor; or

23 9. Licensed clinical alcohol and drug counselor associate:

1 a. In accordance with Section 5 of this administrative regulation; and

2 b. Working under the supervision of a billing supervisor.

3 (3) The rate per unit for an assessment shall be:

4 (a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician

5 Fee Schedule for the service if provided by a:

6 1. Physician; or

7 2. Psychiatrist;

8 (b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee

9 Schedule for the service if provided by:

10 1. An advanced practice registered nurse; or

11 2. A licensed psychologist;

12 (c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee

13 Schedule for the service if provided by a:

14 1. Licensed professional clinical counselor;

15 2. Licensed clinical social worker;

16 3. Licensed psychological practitioner;

17 4. Certified psychologist with autonomous functioning;

18 5. Licensed marriage and family therapist;

19 6. Licensed professional art therapist;

20 7. Licensed behavior analyst; or

21 8. Licensed clinical alcohol and drug counselor in accordance with Section 5 of this

22 administrative regulation; or

23 (d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medi-



care Physician Fee Schedule for the service if provided by a:

1. Marriage and family therapy associate working under the supervision of a billing supervisor;

2. Licensed professional counselor associate working under the supervision of a billing supervisor;

3. Licensed psychological associate working under the supervision of a board-approved licensed psychologist;

4. Certified psychologist working under the supervision of a board-approved licensed psychologist;

5. Certified social worker working under the supervision of a billing supervisor;

6. Physician assistant working under the supervision of a billing supervisor;

7. Licensed professional art therapist associate working under the supervision of a billing supervisor;

8. Licensed assistant behavior analyst working under the supervision of a billing supervisor;

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or

10. Licensed clinical alcohol and drug counselor associate:

a. In accordance with Section 5 of this administrative regulation; and

b. Working under the supervision of a billing supervisor.

(4) The rate per unit for psychological testing shall be:

(a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;

1 (b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee

2 Schedule for the service if provided by a:

3 1. Licensed psychological practitioner; or

4 2. Certified psychologist with autonomous functioning;

5 (c) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medi-  
6 care Physician Fee Schedule for the service if provided by a:

7 1. Licensed psychological associate working under the supervision of a board-  
8 approved licensed psychologist; or

9 2. Certified psychologist working under the supervision of a board-approved licensed  
10 psychologist.

11 (5) The rate per unit for individual outpatient therapy, group outpatient therapy, or col-  
12 lateral outpatient therapy shall be:

13 (a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician  
14 Fee Schedule for the service if provided by a:

15 1. Physician; or

16 2. Psychiatrist;

17 (b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee  
18 Schedule for the service if provided by:

19 1. An advanced practice registered nurse; or

20 2. A licensed psychologist;

21 (c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee  
22 Schedule for the service if provided by a:

23 1. Licensed professional clinical counselor;

- 1        2. Licensed clinical social worker;
- 2        3. Licensed psychological practitioner;
- 3        4. Certified psychologist with autonomous functioning;
- 4        5. Licensed marriage and family therapist;
- 5        6. Licensed professional art therapist;
- 6        7. Licensed behavior analyst; or
- 7        8. Licensed clinical and alcohol drug counselor in accordance with Section 5 of this
- 8        administrative regulation; or

9        (d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medi-  
10        care Physician Fee Schedule for the service if provided by a:

- 11        1. Marriage and family therapy associate working under the supervision of a billing
- 12        supervisor;
- 13        2. Licensed professional counselor associate working under the supervision of a bill-
- 14        ing supervisor;
- 15        3. Licensed psychological associate working under the supervision of a board-
- 16        approved licensed psychologist;
- 17        4. Certified psychologist working under the supervision of a board-approved licensed
- 18        psychologist;
- 19        5. Certified social worker working under the supervision of a billing supervisor;
- 20        6. Physician assistant working under the supervision of a billing supervisor;
- 21        7. Licensed professional art therapist associate working under the supervision of a
- 22        billing supervisor;
- 23        8. Licensed assistant behavior analyst working under the supervision of a billing su-

pervisor;

9. Certified alcohol and drug counselor working under the supervision of a billing supervisor; or

10. Licensed clinical alcohol and drug counselor associate:

a. In accordance with Section 5 of this administrative regulation; and

b. Working under the supervision of a billing supervisor.

(6) The rate per unit for family outpatient therapy shall be:

(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Physician; or

2. Psychiatrist;

(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:

1. An advanced practice registered nurse; or

2. A licensed psychologist;

(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:

1. Licensed professional clinical counselor;

2. Licensed clinical social worker;

3. Licensed psychological practitioner;

4. Certified psychologist with autonomous functioning;

5. Licensed marriage and family therapist;

6. Licensed professional art therapist; or

1        7. Licensed clinical and alcohol drug counselor in accordance with Section 5 of this  
2        administrative regulation; or

3        (d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medi-  
4        care Physician Fee Schedule for the service if provided by a:

5        1. Marriage and family therapy associate working under the supervision of a billing  
6        supervisor;

7        2. Licensed professional counselor associate working under the supervision of a bill-  
8        ing supervisor;

9        3. Licensed psychological associate working under the supervision of a board-  
10       approved licensed psychologist;

11       4. Certified psychologist working under the supervision of a board-approved licensed  
12       psychologist;

13       5. Certified social worker working under the supervision of a billing supervisor;

14       6. Physician assistant working under the supervision of a billing supervisor;

15       7. Licensed professional art therapist associate working under the supervision of a  
16       billing supervisor;

17       8. Certified alcohol and drug counselor working under the supervision of a billing su-  
18       pervisor; or

19       9. Licensed clinical and alcohol drug counselor associate in accordance with Section  
20       5 of this administrative regulation.

21       (7) Reimbursement for the following services shall be as established on the PRTF  
22       Non-Medicare Services Fee Schedule:

23       (a) Mobile crisis services;

- 1 (b) Day treatment;
- 2 (c) Peer support services;
- 3 (d) Parent or family peer support services;
- 4 (e) Intensive outpatient program services;
- 5 (f) Service planning;
- 6 (g) Screening, brief intervention, and referral to treatment;
- 7 (h) Assertive community treatment;
- 8 (i) Comprehensive community support services; or
- 9 (j) Therapeutic rehabilitation services.

10 (8)(a) The department shall use the current version of the Kentucky-specific Medicare  
11 Physician Fee Schedule for reimbursement purposes.

12 (b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently  
13 published and used by the Centers for Medicare and Medicaid Services for the Medi-  
14 care Program is:

15 1. An interim version, the department shall use the interim version until the final ver-  
16 sion has been published; or

17 2. A final version, the department shall use the final version.

18 (9) The department shall not reimburse for a service billed by or on behalf of an entity  
19 or individual that is not a billing provider.

20 Section 4. Not Applicable to Managed Care Organizations. A managed care organi-  
21 zation shall not be required to reimburse in accordance with this administrative regula-  
22 tion for a service covered pursuant to:

23 (1) 907 KAR 9:015; and

1 (2) This administrative regulation.

2 Section 5. Federal Approval and Federal Financial Participation. (1) The depart-  
3 ment's reimbursement for services pursuant to this administrative regulation shall be  
4 contingent upon:

5 (a) Receipt of federal financial participation for the reimbursement; and

6 (b) Centers for Medicare and Medicaid Services' approval for the reimbursement.

7 (2) The reimbursement of services provided by a licensed clinical alcohol and drug  
8 counselor or licensed clinical alcohol and drug counselor associate shall be contingent  
9 and effective upon approval by the Centers for Medicare and Medicaid Services.

10 Section 6. Incorporation by Reference. (1) "Level I and Level II PRTF Non-Medicare  
11 Services Fee Schedule", January 2015, is incorporated by reference.

12 (2) This material may be inspected, copied, or obtained, subject to applicable copy-  
13 right law:

14 (a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Ken-  
15 tucky, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

16 (b) Online at the department's Web site at  
17 <http://www.chfs.ky.gov/dms/incorporated.htm>.

907 KAR 9:020

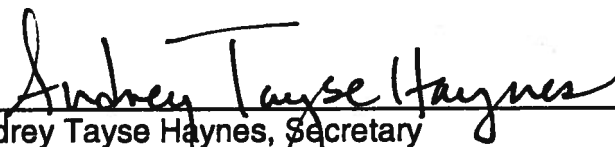
REVIEWED:

3-13-15  
Date

  
Lisa Lee, Commissioner  
Department for Medicaid Services

APPROVED:

4/9/15  
Date

  
Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services



907 KAR 9:020

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on May 22, 2015 at 9:00 a.m. in the Health Services Auditorium, Suite B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by May 15, 2015 five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. You may submit written comments regarding this proposed administrative regulation until close of business June 1, 2015. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

CONTACT PERSON: Tricia Orme, [tricia.orme@ky.gov](mailto:tricia.orme@ky.gov), Office of Legal Services, 275 East Main Street 5 W-B, Frankfort, KY 40601, Phone: (502) 564-7905, Fax: (502) 564-7573.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 9:020

Contact person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program outpatient behavioral health services provided by Level I or Level II psychiatric residential treatment facilities (PRTFs). This administrative regulation is being promulgated in conjunction with 907 KAR 9:015, Coverage provisions and requirements regarding outpatient services provided by psychiatric residential treatment facilities, and the Cabinet for Health and Family Services, Office of Inspector General's Level I and Level II PRTF licensure administrative regulation (902 KAR 20:430). To qualify as a provider, a psychiatric residential treatment facility must be licensed in accordance with 902 KAR 20:430. Level I and Level II PRTFs are authorized to provide, to Medicaid recipients, outpatient behavioral health services related to a mental health disorder, substance use disorder, or co-occurring disorders. The array of services includes a screening; an assessment; psychological testing; crisis intervention; mobile crisis services; day treatment; peer support; parent or family peer support; intensive outpatient program services; individual outpatient therapy; group outpatient therapy; family outpatient therapy; collateral outpatient therapy; service planning; a screening, brief intervention, and referral to treatment for a substance use disorder; assertive community treatment; comprehensive community support services; and therapeutic rehabilitation program services. The Department for Medicaid Services (DMS) will reimburse a percent of Medicare (tiered based on practitioner qualifications) for services that are covered by Medicare and per a fee schedule, incorporated by reference, for services not covered by Medicare.

(b) The necessity of this administrative regulation: This administrative regulation is necessary - to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include Level I and Level II PRTFs) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients'

access to outpatient behavioral health services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates and enhancing and ensuring Medicaid recipients' access to outpatient behavioral health services.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II PRTFs, behavioral health professionals authorized to provide services in Level I or Level II PRTFs, and Medicaid recipients who receive services in Level I or Level II PRTFs will be affected by the administrative regulation. The following behavioral health professionals are authorized to provide services in a Level I or Level II psychiatric residential treatment facility: licensed psychologists, advanced practice registered nurses, licensed professional clinical counselors, licensed clinical social workers, licensed marriage and family therapists, licensed psychological practitioners, certified psychologists with autonomous functioning; licensed psychological associates, certified psychologists; certified social workers, licensed professional counselor associates, marriage and family therapy associates, licensed behavior analysts, licensed assistant behavior analysts, licensed professional art therapists, licensed professional art therapist associates, certified alcohol and drug counselors, peer support specialists, community support associates, licensed clinical and alcohol drug counselors (contingent and effective upon approval by the Centers for Medicare and Medicaid Services), and licensed clinical and alcohol drug counselor associates (contingent and effective upon approval by the Centers for Medicare and Medicaid Services). Currently there are twenty-three (23) Level I PRTFs enrolled in the Medicaid Program and zero (0) Level II PRTFs enrolled in the Medicaid Program.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. Level I or Level II PRTFs that wish to expand their scope of care to provide outpatient behavioral health services will need to provide the services in accordance with the param-

ters/requirements established in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Level I or Level II PRTFs that choose to expand their scope of care to include outpatient behavioral health services will benefit by receiving Medicaid Program reimbursement for the services. Behavioral health professionals authorized to provide outpatient behavioral health services in a Level I or Level II psychiatric residential treatment facility will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of outpatient behavioral health services will benefit from an expanded base of providers from which to receive these services.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(b) On a continuing basis: The response in paragraph (a) also applies here.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under the Social Security Act, Title XIX and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment. Neither an increase in fees nor funding is necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is not applied as the policies apply equally to the regulated entities.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 9:020

Contact person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), 42 U.S.C. 1396a(a)(23), and 42 U.S.C. 1396a(a)(30)(A).

2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope as available to other individuals (non-Medicaid.) Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. Similarly, 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to: "...provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area."

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 9:020

Contact person: Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.

2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3).

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

(c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the outpatient behavioral health services provider base due to the variables involved as DMS cannot estimate the utilization of these services in Level I or Level II PRTFs compared to utilization in other authorized provider settings (independent behavioral health providers, community mental health centers, federally-qualified health centers, rural health clinics, and primary care centers. However, an actuary with whom DMS contracted has estimated an average per recipient per month increase (to DMS) of twenty-seven (27) dollars associated with DMS's expansion of behavioral health services (including substance use disorder services) as well as behavioral health providers this year.

(d) How much will it cost to administer this program for subsequent years? The response to question (c) also applies here.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

**CABINET FOR HEALTH AND FAMILY SERVICES  
DEPARTMENT FOR MEDICAID SERVICES**

**SUMMARY OF MATERIAL INCORPORATED BY REFERENCE**

**907 KAR 9:020**

The Department for Medicaid Services is incorporating by reference the "Level I and Level II PRTF Non-Medicare Services Fee Schedule", January 2015. This one (1) page document lists the reimbursement amounts for outpatient behavioral health services covered via 907 KAR 9:020 for which no Medicare reimbursement exists.



**Level I and II Level PRTF Non-Medicare Services Fee Schedule January 2015**

Code	Description	Unit of Service	Physician (MD or DO)	APRN or Licensed Clinical Psychologist	Licensed Masters-level (Supervisor)	Associate (under supervision)	Physician Assistant (PA)	Other Non- Bachelors-level
9408	Screening, brief intervention, referral to treatment	15 - 30 Minutes	\$20.98	\$17.83	\$16.78	\$14.69	\$14.69	N/C
10015	Alcohol and/or drug services, intensive outpatient program, per diem	Per Diem	\$58.26					
0032	Mental health service plan development by non-physician	15 Minutes	N/C	\$18.30	\$17.22	\$15.07	\$15.07	N/C
0038	Self help/peer services, per 15 minutes	15 Minutes	N/C	N/C	N/C	N/C	N/C	\$8.61
0040	Assertive community treatment program, monthly	Monthly	4 person team: \$750 per month; 10 person team: \$1,000 per month					
2012	Behavioral health day treatment, per hour	60 Minutes	\$86.12	\$73.20	\$68.90	\$60.28	\$60.28	N/C
2019	Therapeutic behavioral health services	15 Minutes	\$21.53	\$18.30	\$17.22	\$15.07	\$15.07	N/C
2021	Comprehensive community support services	15 Minutes	\$21.53	\$18.30	\$17.22	\$15.07	\$15.07	N/C
1480	Intensive outpatient psychiatric services, per diem	Per Diem	\$58.26					
1484	Mobile crisis service, per hour	60 Minutes	\$86.12	\$73.20	\$68.90	\$60.28	\$60.28	\$34.45
007	Alcohol and/or substance abuse services, treatment plan development and/or modification	15 Minutes	\$21.53	\$18.30	\$17.22	\$15.07	\$15.07	N/C

N/C = not covered